

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MANFRE/DANDY, Minors.

UNPUBLISHED

May 27, 2014

No. 318664

Wayne Circuit Court

Family Division

LC No. 12-506008-NA

Before: MURRAY, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Respondent-mother appeals from the trial court order that terminated her parental rights to BJM, BFM, BLM, and KAD, her four minor children, pursuant to MCL 712A.19b(3)(b)(ii), (c)(i), (c)(ii), (g), and (j).¹ We affirm.

Respondent first argues that the trial court erred by finding that statutory grounds for termination were established by clear and convincing evidence.²

A trial court may terminate a respondent's parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) termination is in the children's best interests. MCR 3.977(F); *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2001). "Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). The petitioner has the burden of establishing a statutory ground for termination in MCL 712A.19b(3) by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 352; 612 NW2d 407 (2000).

¹ The court also terminated the parental rights of the father of BJM and BFM, and the father of KAD. Neither father is party to this appeal.

² "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

MCL 712A.19b(3)(b)(ii) permits a court to terminate parental rights under the following circumstances:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

* * *

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

The trial court found that respondent physically abused BFM on more than one occasion. This termination case began in February 2012 when Child Protective Services (CPS) received a complaint that respondent had physically abused her then eight-year-old daughter, BFM. CPS forensically interviewed BFM at her school; she stated that respondent had thrown her off a bed and kicked her in the back. The CPS investigator observed a bruise on BFM's back that appeared to be in the shape of the top part of a boot. BFM also stated that this was not the first time respondent had struck her. CPS also forensically interviewed BLM, who corroborated BFM's version of events. There was also a CPS-substantiated allegation that respondent physically abused BFM by throwing her to the ground. BFM was observed to have scrape marks on her forehead consistent with fingernail scratches. Respondent was provided with services to address the physical abuse, but failed to complete them. Throughout the proceedings, respondent continued to become angry with the children during supervised visitation. Considering the evidence of at least two instances of physical abuse and respondent's failure to complete and benefit from the services offered, the trial court did not clearly err by finding that statutory grounds for termination under MCL 712A.19b(3)(b)(ii) had been proved by clear and convincing evidence.

The trial court also terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (ii), which permit termination under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Termination under this subsection requires a court to assess the likelihood that the circumstances that led to the adjudication, or any other conditions that would cause a child to come within the court's jurisdiction, will be rectified within a reasonable time considering the ages of the children. The determination of what is reasonable includes both how long it will take for the parent to improve and how long a child can wait for the improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991). When multiple children are involved, this determination does not necessarily require a separate assessment for each child. *In re LE*, 278 Mich App 1, 28; 747 NW2d 883 (2008).

Respondent's parental rights were terminated in August 2013, over 182 days after issuance of the initial dispositional order. The children were adjudicated court wards primarily because of respondent's aforementioned physical abuse of BFM and educational neglect of BLM. BLM did not attend school from November 2011 until February 2012, when his grandmother reenrolled him. There were also other conditions that would cause respondent's children to come within the court's jurisdiction, including substance abuse and mental health issues. Respondent's parent-agency treatment plan required her to attend parenting classes and demonstrate that she had gained insight into her children's development, not use any physical discipline, participate in individual therapy, obtain and maintain employment, obtain psychological, psychiatric, and drug assessments, follow the recommendations of the therapist and complete any additional mental health services recommended by the therapist, submit to all required drug screens, maintain weekly supervised visits with her children, and obtain and maintain appropriate housing.

Testimony at the termination hearing indicated that respondent failed to make progress in rectifying the conditions that led to the children's placement into care. Although she completed parenting classes, she failed to benefit from them. She made little progress in therapy. She continued to lose her temper and yell and curse at the children during visits, she physically abused BFM again during an unsupervised visit, and she continued to blame the children for her own inappropriate conduct. During these proceedings, respondent also tested positive for cocaine three times, alcohol twice, and marijuana once. As a result, respondent was required to complete substance abuse treatment and failed to do so. Moreover, in early 2013, soon after respondent was granted unsupervised visitation, she held a party while the children were in her care and became so intoxicated that she had to be carried into the house. This evidence, considered in conjunction with respondent's history of neglect and physical abuse of her children, demonstrates that the trial court did not clearly err by finding that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(c)(i) and (c)(ii).

MCL 712A.19b(3)(g) provides that the court may terminate parental rights if

[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

This subsection requires clear and convincing evidence of both a failure and an inability to provide care and custody. *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990). Although a parent's compliance with a parent-agency agreement is evidence of the parent's

ability to provide proper care and custody, *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003), a parent's failure to comply with a parent-agency agreement can be a valid indication of continuing neglect, *Trejo*, 462 Mich at 360-361 n 16.

The evidence indicated that respondent completed parenting classes, but failed to benefit from them. She also failed to attend anger management classes and insisted that she did not need therapy, yet continued her aggressive and inappropriate behavior with the children. She participated in psychological and psychiatric evaluations, but failed to follow the recommendations of the evaluator, as required. She also continued to abuse substances, testing positive for cocaine, marijuana, and alcohol, and failed to participate in required substance abuse treatment. The trial court found that respondent was "no where near reunification." Accordingly, the trial court did not clearly err by finding that termination of respondent's parental rights was justified under MCL 712A.19b(3)(g).

Finally, the trial court also terminated respondent's parental rights pursuant to MCL 712A.19b(3)(j), which provides that parental rights may be terminated if

[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The record discloses that respondent continued to lose her temper and yell, curse, and resort to physical violence to discipline the children during unsupervised visits, after which she would blame the children for her actions. The same evidence that supports termination under MCL 712A.19b(3)(b)(ii) also supports termination under MCL 712A.19b(3)(j).

Respondent also challenges the trial court's determination that termination of her parental rights was in the children's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Whether termination is in a child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In determining what is in a child's best interests, a court may consider a variety of factors including the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Evidence introduced at the termination hearing indicated that respondent continued to lack insight into her role in the removal of her children. She showed no improvement in rectifying her problems with anger management and she continued to yell, curse, and physically discipline the children during visits. She also tested positive for cocaine, alcohol, and marijuana, and refused to obtain substance abuse treatment. The trial court observed that despite receiving services for more than a year and a half, respondent was "no where near reunification." Not only did respondent fail to benefit from the services that were offered, she continued to deny a need for any further services, thereby demonstrating that there was no reasonable likelihood that she would be able to provide the children with the permanence and stability they required. The

children were doing well in their current placements – three with their grandmother and one with his biological father. The placements provided the children with opportunities for the stability and permanence that respondent was unable to provide. Thus, the trial court did not clearly err by finding that termination of respondent’s parental rights was in the children’s best interests.

Affirmed.

/s/ Christopher M. Murray

/s/ Kathleen Jansen

/s/ Douglas B. Shapiro